


<b>MARICOPA COUNTY</b>  HUMAN SERVICES DEPARTMENT Workforce Development Division	<b>SECTION/REFERENCE</b> H.R. 803, Section 188 of the Workforce Innovation and Opportunity Act and 29 CFR Part 37	<b>PAGE 1 OF 6</b>
	<b>ORIGINAL ISSUE DATE</b> July 2007	<b>REVISION DATE</b> July 2015
	<b>AUTHORIZED BY:</b> Patricia Wallace, Assistant Director	
<b>SUBJECT:</b> Discrimination Complaint Policy and Procedures		<b>ADDENDA:</b> MWC Discrimination Complaint Form

**Purpose:**

This policy outlines the process for WIOA participants that have complaints that are discriminatory in nature. The policy provides the procedures required for prompt and equitable resolution when any person or specific class of individuals files a complaint that he/she has been or is being subjected to discrimination. This policy identifies the grounds or basis upon which a complaint may be filed.

**Background:**

Recipients of financial assistance under WIOA Title I are prohibited from discriminating on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief and against beneficiaries on the basis of citizenship/ immigrant status to work in the United States or participation in programs funded under WIOA, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any WIOA funded program or activity. This policy establishes the discrimination complaint processing procedures for the State of Arizona under H.R. 803, Section 188 of the Workforce Innovation and Opportunity Act and the corresponding regulations set forth in 29 CFR Part 37.

**Responsibility of:**

All WDD, WIOA Contractors, Partners and center staff

**WHO MAY FILE:** Any person, either by him/herself or through a representative, who believes that either, he/she, or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), may file a written complaint. The discrimination may be on the basis of, color, religion, sex, national origin, age, disability, political affiliation or belief and against beneficiaries on the basis of citizenship/immigrant status to work in the United States, or participation in programs funded under WIOA, or in connection with any WIOA funded program or activity.

**WHERE TO FILE:** The State of Arizona uses a three-level system that allows a complainant to file a Complaint: the local level with the Maricopa Workforce Connections Equal Opportunity (EO) Officer; the state level with the State WIOA EO Officer; or at the Federal level with the Director of Civil Rights Center (CRC).

**STATE REQUIRED ACTION:**

**ACTION REQUIRED:** Local Workforce Development Areas (LWDAs), sub-recipients and service providers will follow the procedures set forth in this policy, as well as those listed in 29 CFR Sections 37.70 through 37.80.

Each LWDA Equal Opportunity (EO) Officer will promptly notify both the State WIOA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against the LWDA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief and for beneficiaries only, citizenship or participation in WIOA financially assisted program or activity. This notification must include the names of the parties to the action or lawsuit, the forum in which each case was filed and the relevant case numbers. The requirements for the notice are set forth in 29 CFR Section 37.38.

**WHEN TO FILE:**

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Civil Rights Center (CRC) (Director may extend the filing time. The time period for filing is for the administrative convenience of the Civil Right Center (CRC), and does not create a defense for the respondent.

**COMPUTATION OF TIME:**

In computing any time period as prescribed by these rules, the first day will be excluded and the last included to complete the period. In addition, the time periods are counted in calendar days, not work days.

**DISCRIMINATION COMPLAINT CONTENTS:**

Each complaint must be filed in writing, and must contain the following information:

1. Complainant's name and address (or another means of contacting the complainant);
2. Identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
3. Description of the complainant's allegations. This description must include enough detail to allow the EO Officer or Director of CRC to decide whether:
  - a. LWDA/ WIOA jurisdiction over the complaint exists;
  - b. The complaint was filed in time; and
  - c. The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 37; and
4. The complaint has been signed by either the complainant or the complainant's authorized representative.

The complaint may be filed on any form, including the State of Arizona WIOA Discrimination Complaint Form (Attachment B), but the contents of the complaint must still contain the requirements listed in this section.

**RIGHT OF REPRESENTATION:**

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice. Each person will bear their own costs of representation.

**DISCRIMINATION COMPLAINT PROCESSING PROCEDURES:**

All complaints will be date stamped upon receipt, and forwarded to the appropriate EO officer for processing.

1. The EO Officer will provide a written acknowledgment of receipt of the complaint to the complainant within 5 days with notice that the complainant has the right to be represented in the complaint process.

2. Upon receipt of a complaint or information alleging discrimination, the EO Officer will:
  - a. Review the complaint for accuracy and completeness;
  - b. Initiate an investigation or fact-finding of the circumstances underlying the complaint that shall last at least 14 calendar days;
  - c. Provide written notice to all parties of the specific issues raised in the complaint;
  - d. Provide a statement for each issue, either accepting the issue for investigation or rejecting the issue, and the reasons for each rejection;
  - e. Inform all parties of their right to representation by an attorney or other individual of their choice;
  - f. Inform all parties of their right to present evidence;
  - g. Inform all parties of their right to rebut evidence presented by others;
  - h. Provide for a decision made strictly on the documented evidence.
3. The EO Officer will contact the complainant in writing no later than 14 calendar days of receipt of the complaint to determine the complainant's willingness to mediate using the following alternative dispute resolution (ADR) procedures:
  - a. The choice whether to use the ADR or the customary process rests with the complainant;
  - b. A party to any agreement reached under ADR may file a complaint with the CRC Director in the event the agreement is breached. In such circumstances, the following rules will apply:
    - i. The non-breaching party may file a complaint with the CRC Director within 30 days of the date on which the non-breaching party learns of the alleged breach;
    - ii. The CRC Director will evaluate the circumstances to determine whether the agreement has been breached. If he/she determines that the agreement has been breached, the complainant may file a complaint with CRC Director based upon his/her original allegation(s), and the CRC Director may waive the time deadline for filing such a complaint.
  - c. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC Director as described in Section CFR Section 37.71 through 37.74.
4. The EO Officer will provide a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed that contains the following information:
  - a. For each issue raised in the complaint, a statement of either:
    - A) The decision on the issue and an explanation of the reasons underlying the decision, or
    - B) A description of the way the parties resolved the issue; and
  - b. Notice that the complainant has a right to file a complaint with CRC Director within 30 days of the date on which the Notice of Final Action is issued if he/she is dissatisfied with the recipient's final action on the complaint.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)/MEDIATION PROCESS:**

During the 90 calendar day period, complainants may elect to participate in mediation. If the complainant selects mediation, it allows disputes to be resolved in a less adversarial manner.

The EO Officer will coordinate with a preapproved neutral and impartial mediator. The preferred mediator is the State EO Officer. The mediator must be acceptable to all parties including the EO Officer and will assist the parties in resolving their disputes.

1. If the complainant chooses to participate in mediation, he/she or the authorized representative must respond to the EO Officer in writing within 10 calendar days of the date of the request. This written acceptance must be dated and signed by the complainant or authorized representative and must also include the relief sought.
2. A written confirmation identifying the date, time and location of the initial mediation conference will be sent to all appropriate parties.
3. A consent form will be signed by all parties at the initial mediation conference affirming that the contents of the mediation will be kept confidential.
4. If resolution is reached under ADR/mediation, the agreement will be in writing. A copy of the signed agreement will be sent to the EO Officer.
5. If an agreement is reached under ADR/mediation but a party to the agreement believes his/her agreement has been breached, the non-breaching party may file a complaint with the CRC Director.
6. If the parties do not reach resolution under ADR/mediation, the complainant will be advised of his/her right to file a complaint with the CRC (Civil Rights Center /U.S.DOL (United States Department of Labor; however, the EO Officer will continue with the investigation. The mediation process should be completed within 45 calendar days of receipt of the complaint. This will assist in keeping within the 90 calendar day timeframe of the written Notice of Final Action if the mediation is not successful.

**IF NO WIOA JURISDICTION OVER A COMPLAINT EXISTS:**

Based on information provided by the complainant, the EO Officer may declare that there is no jurisdiction over the complaint for one of more of the following reasons:

1. The basis for the complaint is not covered by the prohibitions of 29 CFR Part 37.
2. The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIOA Title 1 financial assistance as defined in 29 CFR Part 37.4. The EO Officer will provide contact information of the appropriate agency or agencies which may have jurisdiction over the complaint, if known.
3. A Notice of Lack of Jurisdiction (with one or more of the above reasons) will be provided in writing immediately upon the EO Officer discovering the lack of jurisdiction. This written notice shall also inform the complainant that he/she has the right to file a complaint with CRC within 30 days from the date of receiving the notice.

**IF THE EO OFFICER ISSUES A NOTICE OF FINAL ACTION WITH WHICH THE COMPLAINANT IS DISSATISFIED:**

If, during the 90 day period, the EO Officer issues its Notice of Final Action, but the complainant is dissatisfied with the decision on the complaint, the complainant or his/her representative may file a complaint with the CRC Director within 30 days after the date on which the complainant receives the Notice of Final Action.

**IF THE EO OFFICER FAILS TO ISSUE A NOTICE OF FINAL ACTION WITHIN 90 DAYS OF WHEN COMPLAINT WAS FILED:**

If, by the end of 90 days from the date on which the complaint was filed, the EO Officer has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the CRC Director

within 30 days of the expiration of the 90 day period. In other words, the complaint must be filed with the CRC Director within 120 days of the date on which the complaint was filed with the EO Officer.

**CONFIDENTIALITY:**

The EO Officer is required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

1. The fact that the complaint has been filed;
2. The identity of the complainant(s);
3. The identity of individual respondents to the allegations; and
4. The identity of any person(s) who furnished information relating to, or assisting in, a complaint investigation or a compliance review will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint or as otherwise required by law.

**CONFIDENTIALITY OF COMPLAINT:**

All parties against whom the complaint is filed, will receive a copy of the complaint during the course of the investigation or alternative dispute resolution in order to allow the individual or entity the opportunity to respond to the allegation(s). The name of the complainant will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint.

**INTIMIDATION AND RETALIATION PROHIBITED:**

It is prohibited to discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has:

- filed a complaint alleging a violation of WIOA or the regulations;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA or the regulations;
- furnished information to, assisted or participated in any manner in, an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIOA or the regulations; or
- exercised authority under or privileges secured by the nondiscrimination and equal opportunity provisions of WIOA or the regulations.

The sanctions and penalties contained in H.R. 803 dated 7/22/2014, and Section 188(b) of WIOA will be imposed against any LWDA that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

